

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEANETTE LOFTON,

Plaintiff,

vs.

Case No. 12-CV-10327

HON. BERNARD A. FRIEDMAN

MAG. JUDGE R. STEVEN WHALEN

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

**OPINION AND ORDER ACCEPTING AND ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION, GRANTING THE COMMISSIONER'S
MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

I. Introduction

Before the Court are plaintiff's objections to Magistrate Judge R. Steven Whalen's August 7, 2014 Report and Recommendation ("R&R") [docket entries 28 and 30]. The Commissioner did not file a response. Magistrate Judge Whalen recommended that the Court grant the Commissioner's motion for summary judgment [docket entry 26] and deny plaintiff's motion for summary judgment [docket entry 25]. Since the Court has reviewed this matter *de novo* pursuant to Fed. R. Civ. P. 72(b)(3), and finds that the magistrate judge's recitation of the underlying facts is accurate, the Court will adopt his summary of the factual record as it appears on pages 1 through 11 of the R&R.

II. Facts

Plaintiff seeks judicial review of the Commissioner's decision denying her claim for disability insurance benefits. Plaintiff applied for benefits on October 27, 2009, claiming

disabilities resulting from, among other things diabetes, depression, arthritis and hypertension as of December 31, 2002. The application was denied on March 2, 2010 and plaintiff subsequently filed a timely notice for a hearing. On June 17, 2011, a hearing was held before an Administrative Law Judge (“ALJ”), during which plaintiff was represented by counsel. With respect to her eligibility for disability insurance benefits, the ALJ found that claimant was not “disabled” within the meaning of the Social Security Act.

Thereafter, plaintiff appealed the ALJ’s unfavorable determination to the Appeals Council, which denied her request for review. Plaintiff then filed the instant pro se complaint for judicial review of the denial of benefits.

III. Standard of Review

This Court has original jurisdiction to review the Commissioner’s final administrative decision pursuant to 42 U.S.C. § 405(g). Judicial review under this statute is limited in that the Court “must affirm the Commissioner’s conclusions absent a determination that the Commissioner has failed to apply the correct legal standards or has made findings of fact unsupported by substantial evidence in the record.” Longworth v. Comm’r of Soc. Sec., 402 F.3d 591, 595 (6th Cir. 2005) (quoting Warner v. Comm’r of Soc. Sec., 375 F.3d 387, 390 (6th Cir. 2004)). The Commissioner’s findings of fact are conclusive if they are supported by substantial evidence. 42 U.S.C. § 405(g). As a result, this Court may not reverse the Commissioner’s decision merely because it disagrees or “because there exists in the record substantial evidence to support a different conclusion.” McClanahan v. Comm’r of Soc. Sec., 474 F.3d 830, 833 (6th Cir. 2006) (quoting Buxton v. Halter, 246 F.3d 762, 772 (6th Cir. 2001)). “The substantial evidence standard presupposes that there is a ‘zone of choice’ within which the

Commissioner may proceed without interference from the courts.” Felisky v. Bowen, 35 F.3d 1027, 1035 (6th Cir. 1994).

IV. Analysis

On appeal, plaintiff maintains that: 1) the ALJ failed to consider the extent to which her irritable bowel disease affected her capacity to work; and 2) the ALJ improperly determined that her ability to obtain a bachelor’s degree undermined her claim of disability.

After reviewing the record, the Court concludes that plaintiff waived her first objection because she failed to raise this issue in her motion for summary judgment before the magistrate judge. See Dietzel v. Comm’r of Soc. Sec., No. 11-13377, 2012 U.S. Dist. LEXIS 115611, at *8 (E.D. Mich. Aug. 16, 2012) (stating that “[i]t is well established that a party may not raise an argument, advance a theory, or marshal evidence before a District Judge that was not fairly presented to the Magistrate Judge.”). In any event, the objection lacks merit because the medical evidence does not support her subjective account of the severity of her condition. See Jernigan v. Comm’r of Soc. Sec., No. 13-10454, 2014 U.S. Dist. LEXIS 41592, at *4 n.1 (E.D. Mich. Mar. 28, 2014).

Furthermore, in light of the available medical evidence, the ALJ did not err in concluding that plaintiff’s disability claim was belied by her ability to pursue and obtain two undergraduate degrees. See Wilson v. Comm’r of Soc. Sec., No. 09-10112, 2009 U.S. Dist. LEXIS 125949, at *7 (E.D. Mich. Jul. 30, 2009). Accordingly,

IT IS ORDERED that Magistrate Judge Whalen's Report and Recommendation dated August 7, 2014, is hereby accepted and adopted and the findings of the Commissioner are affirmed.

IT IS FURTHER ORDERED that the Commissioner's motion for summary judgment is granted.

IT IS FURTHER ORDERED that plaintiff's motion for summary judgment is denied.

Dated: September 24, 2014
Detroit, Michigan

S/ Bernard A. Friedman____
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE